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May 18, 2011

Senator Cynthia Stone Creem, Chairwoman
Representative Eugene L. O'Flaherty, Chairman
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Re: House Bill 2261 – Massachusetts Uniform Trust Code (MUTC)

Dear Senator Creem, Representative O'Flaherty, and Members of the Committee:

Thank you for allowing me to submit this letter in support of House Bill 1098, the Massachusetts Uniform Trust Code (MUTC). In addition to my interest as a citizen of the Commonwealth, I am also one of three Massachusetts Uniform Law Commissioners who serve under gubernatorial appointment on the National Conference of Commissioners on Uniform State Law (the Uniform Law Commission or ULC). In my professional life, apart from my volunteer service as a Massachusetts Uniform Law Commissioner, I am a law professor who specializes in trusts and estates.

My background. I am currently the John L. Gray Professor of Law at Harvard University. I have held previous academic appointments at New York University, Northwestern University, and the University of Michigan. My principal research and teaching specialty is in the overlapping subjects of wills, trusts, estates, and fiduciary administration. I am a coauthor of *Wills, Trusts, and Estates* (8th ed. 2009), the most commonly used coursebook on trusts and estates in U.S. law schools. In one strand of my research, which has been published in scholarly journals such as the *Yale Law Journal* and the *Journal of Law and Economics*, I have undertaken empirical study of the practical effects of trusts and estates law reform.

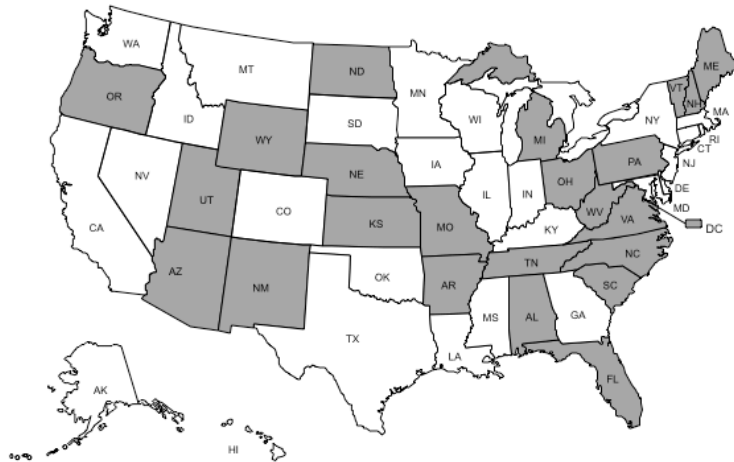
The Uniform Law Commission. The ULC was established in 1892 to provide the states with nonpartisan and well-drafted legislation to bring clarity, stability, and uniformity to critical areas of state statutory law. The ULC employs a deliberative and open drafting process that draws on the expertise of the Commissioners as well as outside experts, advisors, and observers who represent the views of other organizations or interests that will be subject to the proposed laws. By providing uniform rules and procedures, albeit with state-specific modifications that reflect the diverse needs of the individual states, the ULC strengthens the federal system.

The Commissioners who make up the ULC are volunteers who donate their time and serve without compensation. All the states and several U.S. territories are represented on the Commission. Commissioners are appointed under local law. In Massachusetts, we have three Uniform Law Commissioners. I have had the honor of serving the Commonwealth as one of our Commissioners since 2008. Within the Massachusetts delegation, I have taken the lead in matters pertaining to trusts and estates owing to my professional expertise in the field.

The Uniform Trust Code. The Uniform Trust Code (UTC), promulgated by the ULC in 2000, is the first national codification of the American law of trusts. The UTC was produced over a five-year drafting process that involved extensive consultation with the trusts and estates bar, the trust banking industry, judicial officers, and law professors. Although the first systematic statutory codification of the law of trusts, the UTC is the natural culmination of the prior century's worth of piecemeal codification of various facets of trust law, including the Uniform Principal and Income Act, the Uniform Prudent Investor Act, the Uniform Statutory Rule Against Perpetuities, and Article VII of the Uniform Probate Code, each adopted in Massachusetts.

The UTC has been well received. Since 2000, twenty-three states and the District of Columbia have enacted it. Many other states are likely to follow. The movement to codify the law of trusts by enactment of the UTC reflects the increasingly national character of trust practice. States that do not keep up with national trust law developments risk falling behind in the national competition for trust business.

Uniform Trust Code Adoptions (5/2011)



In more than a decade of scholarly vetting and real-world testing in enacting jurisdictions, the UTC has proved to be a success. The UTC locates in a single, orderly codification the central tenants of prevailing American trust law. In enacting jurisdictions, the UTC has reduced uncertainty, suppressing costly and needless litigation. Broad enactment of the UTC has also facilitated the continued growth of the trust industry, which as I have said is increasingly national in character, reflecting the displacement of land by easy-to-move liquid financial assets as the primary form of wealth accumulation.

Even in a state such as Massachusetts, which has a well-developed common law of trusts, case law authority on various important issues is stale, unclear, or simply lacking. Enactment of the UTC would remedy this deficiency and would provide for a host of salutary modernizations. For example, the UTC includes uncontroversial improvements to traditional doctrine such as a modernized change-of-circumstances doctrine (section 412), an updated law of trustee removal (section 706), and an apparatus for combination or division of trusts (section 417) and modification or termination of uneconomic trusts (section 414). Each of these reforms promotes efficiency in trust administration. And each is familiar, not only because of the widespread enactment of the UTC, but also owing to the regular teaching of the UTC in law schools.

In sum, enactment of the UTC would bring Massachusetts into alignment with salutary national trends in the law of trusts, signaling the Commonwealth's continued hospitality to trust business—a business that provides jobs and tax revenues without environmental or other negative third-party effects.

The Massachusetts Trust Code (MUTC). House Bill 1098, the Massachusetts Uniform Trust Code, is a version of the UTC that was customized for Massachusetts. The MUTC drafting committee, which included representatives from the bar, trust banks, and private trust offices, reviewed the UTC section-by-section, revising as necessary to account for Massachusetts-specific practices. The MUTC is thus the product of collaboration between the Uniform Law Commission, the relevant stakeholders, and the interested Massachusetts parties.

To be sure, a few critics have found fault with one or another of the UTC provisions. But the committee that adapted the UTC for Massachusetts has excised or at least modified those provisions. What remains in the MUTC is the core of the UTC for which there is broad scholarly and professional support within Massachusetts and nationally.

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In summary, the case for enactment of House Bill 1098, the Massachusetts Uniform Trust Code, is clear and compelling. The Uniform Trust Code, on which the MUTC is based, has already been enacted in about half the country. For more than a

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decade the UTC has commanded broad scholarly and professional support. Enactment of the MUTC would bring Massachusetts into alignment with prevailing national trends in trust practice, an increasingly important consideration owing to the increasingly national character of trust business.

I very much appreciate this opportunity to comment on House Bill 1098, the MUTC. Thank you for your kind consideration. Please do not hesitate to contact me if I might be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert H. Sitkoff", with a stylized flourish extending from the end.

Robert H. Sitkoff